

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MARK SCULLY	:	CIVIL ACTION
	:	
v.	:	
	:	
US WATS, INC., KEVIN O'HARE, AARON	:	
BROWN and STEPHEN PARKER	:	NO. 97-4051

SUPPLEMENTAL OPINION

Fullam, Sr. J. June , 1999

The Adjudication filed on June 8, 1999 contains a mathematical error which requires correction, and it does not fully explain the reasoning by which the Court arrived at its judgment.

In addition to the loss of salary, I awarded plaintiff \$549,250, plus \$65,910 interest, for a total of \$615,260 for the defendants' failure to honor his stock options. The correct amount is \$531,250 (850,000 shares, at .625 cents per share), plus interest in the sum of \$63,750, making a total of \$595,000.

By way of further explanation, although, at the time plaintiff was discharged, his option had vested only with respect to 600,000 shares, it is apparent that (1) if he had not been fired, he would have exercised his option with respect to the remaining 150,000 shares when it vested in May 1997, and (2) defendants' repudiation of the stock option agreement deprived plaintiff of the right to purchase a total of 850,000 shares. In calculating damages, I use the market price of the shares as of the date of repudiation for the entire 850,000 shares rather than

the initial 600,000 shares alone, because (1) the record clearly establishes the \$1.375 price as of the repudiation date; (2) although it is clear the market price was yet higher in May 1997, plaintiff has not sought to prove damages based on the May date; and (3) plaintiff has the burden of proof on this issue.

Although the shares plaintiff had an option to purchase would have been restricted shares, I did not apply the 30 percent discount from market price because these parties never contemplated that the option would provide shares which plaintiff would immediately re-sell; defendants cannot be heard to insist that plaintiff should be treated as if his purpose was an immediate sale of the stock. The entire thrust of the overall arrangement between plaintiff and the defendants was that plaintiff's efforts in improving the fortunes of the company would be rewarded on the basis of the company's improved condition as of a year after the exercise of the option. As it turned out, the stock would have been worth more than \$2 per share at the end of the year's restriction, but it would be unduly favorable to plaintiff to use that figure, since it was by no means assured as of the date the option was repudiated, and since, presumably, plaintiff's individual efforts were not the sole cause of the post-repudiation increase in value.

In accordance with the views expressed in the June 8, 1999 Adjudication as now supplemented, an amended judgment will

be entered.

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ORDER

AND NOW, this day of June, 1999, IT IS ORDERED
that the judgment entered on June 8, 1999 is AMENDED as follows:

1. Judgment is entered in favor of the plaintiff Mark
Scully and against the defendants US Wats, Inc., Aaron Brown and
Stephen Parker in the sum of \$626,442.20.

2. As to the defendant Kevin O'Hare, the complaint is
DISMISSED.

John P. Fullam, Sr. J.